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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,999	01/06/2006	Lothar Eggeling	23155	2791

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EXAMINER	
GEBREYESUS, KAGNEW H	

ART UNIT	PAPER NUMBER
1656	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/520,999	EGGELING ET AL.	
	Examiner	Art Unit	
	KAGNEW H. GEBREYESUS	1656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 March 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26,28 and 29* is/are pending in the application.

4a) Of the above claim(s) *11-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☒ Claim(s) *28 and 29* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's reply dated March 18, 2009 to the Office Action mailed on January 9, 2009 is acknowledged. Claim 27 is cancelled. Claims 11-26 remain withdrawn from further consideration. Claims 1-10 and 28-29 are present for examination. The restriction requirement is made **final**.

Objections and rejections not re-iterated from the previous Office Action are hereby withdrawn.

Claim Objections

Claim 28(a) remains objected to because line 7 of the claim recites: …"and selected from…" which should read "…selected from…" The word "**and**" is not necessary in the context it was used. Applicants argue that the word "…and…" clarifies that reference to the nucleic acid rather than the polypeptide sequence. However this is not found persuasive. Claim 28 (a) primarily refers to a nucleic acid sequence. Applicants may also clarify the claim by replacing the term "and selected from…" with "…wherein said nucleic acid is selected from…" Appropriate correction is required.

Claim 9 is objected to because of the following informalities: Claim 9 is objected to because the recitation "…one nucleic acid claim 1, claim 2, claim3…". The claim should read "...one nucleic acid <u>according to</u> claim 1, claim 2, claim 3...". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 now including claims 7-10 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In the previous Office action, Applicants were notified that examples as to why the claims were generally narrative and indefinite, for failing to conform to current U.S. practice.

The claims appear to be a literal translation into English from a foreign document and still contain grammatical and idiomatic errors. For example claim 1 encompasses the recitation "…**a gene serA**…" instead of "…**a serA gene**…"

Furthermore while Applicants argue that SEQ ID NO: 1-5 are various fragments of SEQ ID NO: 6, claims 1-5 do not contain this limitation. Claims 1-5 appear to present SEQ ID NO: 1-5 as serA genes.

For example it is unclear if claim 1 is drawn to the nucleic acid consisting of SEQ ID NO: 1 where said sequence encodes an unregulated 3-phosphoglycerate dehydrogenase and where said nucleic acid is a fragment of a serA gene? The same is apparent in claims 2-5. Claims 7-10 are rejected for depending on rejected claims. Clarification is required.

Withdrawn -Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 were rejected under 35 U.S.C. 102(b) as being anticipated by US 6,037,154 or US 6,258,573 (Suga et al). This rejection is withdrawn for the following reason.

The rejection under 35 U.S.C. 102(b) as anticipated by US 6,037,154 or US 6,258,573 (Suga et al) is withdrawn because Suga et al teach a Coryneform bacteria comprising an unregulated 3-phosphoglycerate dehydrogenase (PDGH) resulting from a mutation in the gene encoding 3-phosphoglycerate dehydrogenase of SEQ ID INO 14 wherein said gene is has the polynucleotide of SEQ ID NO: 13. Sunga et al's nucleotide sequence encoding a mutant 3-phosphoglycerate dehydrogenase consists of one or more substitutions, deletions or additions and **wherein at least glutamic acid at position 325th is substituted with lysine** and wherein said substitution resulted in lose of serine feedback inhibition.

Both the instant application and Suga et al teach lack of serine feedback inhibition in strains comprising the mutant 3-phosphoglycerate dehydrogenase (PDGH). The instant application differs from the polynucleotide sequence of Suga et al in that the instant application claims deletion mutants consisting of polynucleotide sequences

(SEQ ID NO: 1-5) that encode polypeptide fragments were said polypeptide fragments consist a glutamic acid residue at position 325.

Conclusion: Claim 29 is objected to but would otherwise be allowable if re-written in an independent form. Claim 28 is objected to for reasons discussed above.

This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to

the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAGNEW H. GEBREYESUS whose telephone number is (571)272-2937. The examiner can normally be reached on 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANDREW WANG can be reached on 571-272-0811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kagnew H Gebreyesus/
Examiner, Art Unit 1656

/Andrew Wang/
Supervisory Patent Examiner, Art Unit 1656